

# Foreign Medical Graduates: A Brief Overview of the J-1 Visa Waiver Program

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## Summary

The Educational and Cultural Exchange Visitor program has become a gateway for foreign medical graduates (FMGs) to gain admission to the United States as nonimmigrants for the purpose of graduate medical education and training. The visa most of these physicians enter under is the J-1 nonimmigrant visa. Under the J-1 visa program, participants must return to their home country after completing their education or training for a period of at least two years before they can apply for another nonimmigrant visa or legal permanent resident (LPR) status, unless they are granted a waiver of the requirement.

To qualify for a waiver, a request must be submitted on behalf of the FMG, by an Interested Government Agency (IGA), or a state Department of Health. In exchange, the FMG must agree to work in a designated healthcare professional shortage area for a minimum of three years. The ability of states to request a waiver is known as the “Conrad State Program,” and was added temporarily to the Immigration and Nationality Act (INA) in 1994. The “Conrad State Program” has been extended by the past several Congresses. Most recently, the program was extended until September 30, 2009, by P.L. 111-9. This report will be updated as warranted by legislative developments.

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## Background

International medical graduates (IMGs) are foreign nationals or U.S. citizens who graduate from a medical school outside of the United States. In 2007, the most recent year for which data are available, there were 902,053 practicing physicians in the United States, and IMGs accounted for 25.3% (228,665) of these.<sup>1</sup> The use of foreign nationals remains a means of providing physicians to practice in underserved areas.<sup>2</sup>

**Table 1. Top 20 States with Practicing International Medical Graduates in 2007**

State	Number of IMGs
New York	34,455
California	24,510
Florida	18,861
New Jersey	13,336
Illinois	13,101
Texas	12,729
Pennsylvania	10,528
Ohio	9,672
Michigan	9,227
Maryland	6,929
Massachusetts	6,807
Virginia	4,786
Georgia	4,226
Connecticut	4,104
Missouri	3,382
Indiana	3,081
North Carolina	3,061
Arizona	3,032
Wisconsin	2,872
Tennessee	2,827
Total	191,526

**Source:** Physician Characteristics and Distribution in the U.S. , 2007, American Medical Association.

This report focuses on those IMGs who are foreign nationals, hereafter referred to as foreign medical graduates (FMGs). Many FMGs first entered the United States to receive graduate medical education and training as cultural exchange visitors through the J-1 cultural exchange program. While there are other ways for FMGs to enter the United States, including other

<sup>1</sup> American Medical Association, *International Medical Graduates in the U.S. Workforce*, A Discussion Paper, October 2007.

<sup>2</sup> U.S. Government Accountability Office, *Data on Use of J-1 Visa Waivers Needs to Better Address Physician Shortages*, GAO-07-52, November 2006.

temporary visa programs as well as permanent immigration avenues, this report focuses on FMGs entering through the J-1 program.<sup>3</sup>

## Waiver Request Process

As exchange visitors, FMGs can remain in the United States on a J-1 visa until the completion of their training, typically for a maximum of seven years. After that time, they are required to return to their home country for at least two years before they can apply to change to another nonimmigrant status or legal permanent resident (LPR) status. Under current law, a J-1 physician can receive a waiver of the two-year home residency requirement in several ways:

- the waiver is requested by an interested government agency (IGA) or state department of health;
- the FMG's return would cause extreme hardship to a U.S. citizen or LPR spouse or child; or
- the FMG fears persecution in the home country based on race, religion, or political opinion.

Most J-1 waiver requests are submitted by an IGA and forwarded to the Department of State (DOS) for a recommendation. If DOS recommends the waiver, it is forwarded to U.S. Citizenship and Immigration Services (USCIS) in the Department of Homeland Security (DHS) for final approval.<sup>4</sup> Upon final approval by USCIS, the physician's status is converted to that of an H-1B professional specialty worker. Prior to 2004, J-1 waiver recipients were counted against the annual H-1B cap of 65,000.<sup>5</sup>

## Interested Government Agencies (IGAs)

An IGA may request a waiver of the two-year foreign residency requirement for an FMG by showing that his or her departure would be detrimental to a program or activity of official interest to the agency. In return for sponsorship, the FMG must submit a statement of "no objection" from the government of his or her home country, have an offer of full-time employment, and agree to work in a health professional shortage area or medically underserved area for at least three years.<sup>6</sup> According to USCIS regulations, the FMG must be in status while completing the required term and must agree to begin work within 90 days of receipt of the waiver. If an FMG fails to fulfill the three-year commitment, he or she becomes subject to the two-year home residency requirement and may not apply for a change to another nonimmigrant, or LPR status until meeting that requirement. Although any federal government agency can act as an IGA, the main

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<sup>3</sup> For further information on options available for temporary or permanent admission to the United States, see CRS Report RL32235, *U.S. Immigration Policy on Permanent Admissions*, by Ruth Ellen Wasem and . CRS Report RL31381, *U.S. Immigration Policy on Temporary Admissions*, by Chad C. Haddal and Ruth Ellen Wasem.

<sup>4</sup> Oversight of the J-1 program has been the responsibility of several agencies over the past 20 years; it is currently the responsibility of the Department of State. While the Department of State recommends J-1 waiver requests, DHS has the final authority to determine if the exchange visitor is subject to the home residency requirement and to approve the waiver.

<sup>5</sup> In instances where the H-1B cap has been met, the physician's J visa status was extended, and the physician was granted H-1B status in the following fiscal year. For further information on H-1B visas, see CRS Report RL30498, *Immigration: Legislative Issues on Nonimmigrant Professional Specialty (H-1B) Workers*, by Ruth Ellen Wasem.

<sup>6</sup> For more information on Health Professional Shortage Areas (HPSA), see <http://bhpr.hrsa.gov/shortage>. This site also provides information on the Proposed Rule concerning shortage area designations.

federal agencies that have been involved in sponsoring FMGs are the Department of Veterans Affairs (VA), the Department of Health and Human Services (HHS), the Appalachian Regional Commission (ARC), and the United States Department of Agriculture (USDA).<sup>7</sup> Under the “Conrad Program” discussed below, state health departments may also act as IGAs.

## **Department of Health and Human Services (HHS)**

HHS has begun accepting waivers to primary care physicians only relatively recently. Historically, HHS had been very restrictive in its sponsorship of J-1 waiver requests. HHS emphasized that the exchange visitor program was a way to pass advanced medical knowledge to foreign countries, and that it should not be used to address medical underservice in the United States.<sup>8</sup> HHS’ position was that medical underservice should be addressed by programs such as the National Health Service Corps. Prior to December 2002, HHS only sponsored waivers for physicians or scientists involved in biomedical research of national or international significance. In December 2002, HHS announced that it would begin sponsoring J-1 waiver requests for primary care physicians and psychiatrists in order to increase access to healthcare services for those in underserved areas.<sup>9</sup> HHS began accepting waiver applications on June 12, 2003, but suspended its program shortly after for reevaluation. On December 10, 2003, HHS released new program guidelines, and reinstated their program.

## **Appalachian Regional Commission (ARC)**

Established by Congress in 1965, ARC is a joint federal and state entity charged with, among other things, ensuring that all residents of Appalachia have access to quality, affordable health care. The region covered by ARC consists of all of West Virginia and parts of Alabama, Georgia, Kentucky, Maryland, Mississippi, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, and Virginia.

ARC will submit a request for a waiver at the request of a state in its jurisdiction. The waiver must be recommended by the governor of the sponsoring state. In return, the FMG must agree to provide primary care for at least 40 hours a week for three years at a health professional shortage area facility. The facility must be a Medicare or Medicaid-certified hospital or clinic that also accepts medically indigent patients. The facility must also prove that it has made a good faith effort to recruit a U.S. physician in the six months preceding the waiver application. In addition, the physician must be licensed by the state in which he or she will be practicing, and must have completed a residency in family medicine, general pediatrics, obstetrics, general internal medicine, general surgery, or psychiatry. The physician must sign an agreement stating that he or she will comply with the terms and conditions of the waiver, and will pay the employer \$250,000 if he or she does not practice in the designated facility for three years.

## **Delta Regional Authority (DRA)**

On May 17, 2004, the DRA officially began accepting applications for its new J-1 visa waiver program. The DRA includes 240 county or parish areas in Alabama, Arkansas, Illinois, Kentucky,

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<sup>7</sup> Other participants in the program have been the Department of Housing and Urban Development (HUD), which ended its participation in 1996, and the U.S. Coast Guard.

<sup>8</sup> See General Accounting Office, *Foreign Physicians: Exchange Visitor Program Becoming Major Route to Practicing in U.S. Underserved Areas*, GAO/HEHS-97-26, December 30, 1996.

<sup>9</sup> U.S. Department of Health and Human Services, “HHS Exchange Visitor Program, Interim Final Rule,” *Federal Register*, vol. 67, no. 244, December 19, 2002, p. 77692.

Louisiana, Mississippi, Missouri and Tennessee. The goal of the Authority is to stimulate economic development and foster partnerships that will have a positive impact on the economy of the eight states that make up the Authority. Under the DRA's waiver program, physicians must submit an application processing fee; agree to practice in DRA designated shortage areas for a period of at least three years; and agree to pay \$250,000 to the sponsoring facility if they do not fulfill any portion of their commitment, or \$6,945 per month for each month they fail to fulfill their requirement.

## Conrad State Programs

In 1994, Senator Kent Conrad sponsored the provision establishing the J-1 visa waiver program at the state level. The program is commonly referred to as the "Conrad State Program" program after him.<sup>10</sup> Under the original program, participating states were allowed to sponsor up to 20 waiver applications for primary care physicians annually. To date, this provision has been extended several times. In 1996, the program was extended until 2002.<sup>11</sup> Once again in 2002, the program was extended until 2004 and the number of waivers allowed per state was increased to 30.<sup>12</sup>

In 2004, Congress extended the Conrad program until June 1, 2006, and expanded the program to allow states to recruit primary care and specialty physicians.<sup>13</sup> Other provisions of the law exempted waiver recipients from the H-1B annual cap, and allowed the states to place up to five physicians in facilities that serve patients living in designated shortage areas without regard to the facility's location. Previously, physicians could only serve in facilities located in designated shortage areas. In 2007, the program was extended through June 1, 2008.<sup>14</sup>

The waiver process for states is the same as other IGAs, however administration of the program varies by state. FMGs who are sponsored for a J-1 visa waiver by a state agree to practice medicine in designated shortage areas in the sponsoring state for a period of three to four years. FMGs working in these areas are not only required to meet the general requirements for medical licensing in the United States, but they are also required to meet state-specified licensing criteria. According to a 2006 Government Accountability Office (GAO) report on the J-1 program, states accounted for 90% of waiver requests, and had requested more than 3,000 waivers between 2003 and 2005.<sup>15</sup>

**Table 2. Total Number of J-1 Visa Waivers Requested in FY2003-FY2005, by States**

State	FY2003	FY2004	FY2005	Total
Alabama <sup>a</sup>	21	22	28	71
Alaska	5	0	1	6
American Samoa	0	0	0	0

<sup>10</sup> Immigration and Nationality Technical Corrections Act of 1994, P.L. 103-416; 108 Stat. 4305, §220.

<sup>11</sup> Illegal Immigration Reform and Immigrant Responsibility Act of 1996, P.L. 104-208, division C, §622; 110 Stat 3009.

<sup>12</sup> 21<sup>st</sup> Century Department of Justice Appropriations Authorization Act, P.L. 107-273; 116 Stat. 1758, §11018.

<sup>13</sup> To Improve Access to Physicians in Medically Underserved Areas; P.L. 108-441; 118 Stat. 2630.

<sup>14</sup> Physicians for Underserved Areas Act; P.L. 109-477; 120 Stat. 3572.

<sup>15</sup> See Government Accountability Office, *Data on Use of J-1 Visa Waivers Needs to Better Address Physician Shortages*, GAO-07-52, November 2006.

<b>State</b>	<b>FY2003</b>	<b>FY2004</b>	<b>FY2005</b>	<b>Total</b>
Arizona <sup>a</sup>	31	31	30	92
Arkansas <sup>a</sup>	30	35	30	95
California	33	30	31	94
Colorado <sup>a</sup>	11	3	5	19
Connecticut <sup>a</sup>	28	30	26	84
Delaware	21	21	16	58
District of Columbia	3	9	3	15
Florida <sup>a</sup>	40	30	30	100
Georgia <sup>a</sup>	35	31	28	94
Guam	0	1	2	3
Hawaii	2	1	4	7
Idaho <sup>a</sup>	2	0	1	3
Illinois <sup>a</sup>	31	30	31	92
Indiana <sup>a</sup>	28	30	31	89
Iowa	30	30	28	88
Kansas	14	26	17	57
Kentucky <sup>a</sup>	55	43	39	137
Louisiana <sup>a</sup>	17	14	10	41
Maine	29	18	25	72
Maryland <sup>a</sup>	18	22	29	69
Massachusetts	28	30	30	88
Michigan	31	32	30	93
Minnesota	30	15	21	66
Mississippi <sup>a</sup>	24	24	32	80
Missouri <sup>a</sup>	32	34	33	99
Montana	2	1	2	5
Nebraska	15	7	13	35
Nevada	26	18	13	57
New Hampshire	6	11	15	32
New Jersey	2	1	2	5
New Mexico	29	27	29	85
New York <sup>a</sup>	35	33	38	106
North Carolina	10	11	17	38
North Dakota	11	13	6	30
Ohio <sup>a</sup>	37	35	37	109
Oklahoma	1	17	12	30
Oregon	20	19	22	61



State	FY2003	FY2004	FY2005	Total
Pennsylvania <sup>a</sup>	20	16	22	58
Puerto Rico	0	0	0	0
Rhode Island	30	30	30	90
South Carolina <sup>a</sup>	31	26	21	78
South Dakota	10	6	6	22
Tennessee <sup>a</sup>	25	33	15	73
Texas <sup>a</sup>	40	38	31	109
Utah	4	6	5	15
Vermont	0	1	2	3
Virgin Islands	1	0	0	1
Virginia	17	13	19	49
Washington <sup>a</sup>	32	30	28	90
West Virginia <sup>a</sup>	26	16	20	62
Wisconsin	29	23	12	64
Wyoming	3	3	4	10
Total	1,091	1,026	1,012	3,129

**Source:** Government Accountability Office, Data on Use of J-1 Visa Waivers Needs to Better Address Physician Shortages, GAO-07-52, November 2006.

**Note:** Most recent data available.

a. Totals include waiver requests through IGAs.

## Recent Legislation

Several bills were introduced in the 110<sup>th</sup> Congress that would have extended or expanded the Conrad Program. Ultimately, P.L. 110-362 extended the program through March 6, 2009.

In an effort to extend the state J-1 waiver program for physicians, Representative Zoe Lofgren introduced H.R. 1127 on February 23, 2009, and it became public law on March 20, 2009.<sup>16</sup> This law extends the waiver provision until September 30, 2009. On July 8, 2009, Senator Orrin Hatch introduced S.Amdt. 1428 to the Department of Homeland Security Appropriations Act ( H.R. 2892). The amendment, which passed unanimously on July 9, 2009, would extend the program through September 30, 2012. H.R. 2892 passed the Senate on July 9, 2009.

## Author Information

Karma Ester  
Information Research Specialist

<sup>16</sup> P.L. 111-9: 123 Stat. 989.



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